

**UNITED STATES DISTRICT COURT  
OHIO SOUTHERN DISTRICT COURT  
DAYTON**

**CASE NO.: \*\*\*\***

MORGAN HOWARTH,

Plaintiff,

v.

AAA PRECISION LANDSCAPING, LLC,

Defendant,

**COMPLAINT FOR COPYRIGHT INFRINGEMENT  
(INJUNCTIVE RELIEF DEMANDED)**

Plaintiff, MORGAN HOWARTH, by and through his undersigned counsel, brings this Complaint against Defendant, AAA PRECISION LANDSCAPING, LLC, for damages and injunctive relief, and in support thereof states as follows:

**SUMMARY OF THE ACTION**

1. Plaintiff, MORGAN HOWARTH (“Howarth”), brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Howarth's original copyrighted Work of authorship.

2. With his signature style, Howarth creates art out of space using carefully coordinated compositions and lighting. The rich and illustrative look in his architecture photos comes from meticulously combining a multitude of separately lit images into one perfect shot.

3. Defendant, AAA PRECISION LANDSCAPING, LLC (“AAA Precision”), is a landscaping company that offers services including designing and installing concrete patios, artificial pond construction, drainage systems, tile laying, tree trimming, lawn mowing, and

gardening services. At all times relevant herein, AAA Precision owned and operated the internet website located at the URL <https://www.precisionlandscaped.com/> (the “AAA Website”).

4. Howarth alleges that Defendant copied his copyrighted Work from the internet in order to advertise, market and promote its business activities. AAA Precision committed the violations alleged in connection with its business.

### **JURISDICTION AND VENUE**

5. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

6. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

7. Defendant is subject to personal jurisdiction in Ohio.

8. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, AAA Precision engaged in infringement in this district, AAA Precision resides in this district, and AAA Precision is subject to personal jurisdiction in this district.

### **DEFENDANT**

9. AAA Precision Landscaping, LLC is an Ohio Limited Liability Company, with its principal place of business at 3656 Wilmington Dayton Rd, Bellbrook, Ohio, 45305, and can be served by serving its Registered Agent, Steve Yontz, at 3656 Wilmington Dayton Road, Bellbrook, OH 45305.

### **THE COPYRIGHTED WORK AT ISSUE**

10. In 2016, Howarth created the photograph entitled “11203\_Elmview\_Garden\_Pergola\_F\_3,” which is shown below and referred to herein as the “Work”.



11. Howarth registered the Work with the Register of Copyrights on January 19, 2017, and was assigned registration number VA 2-038-489. The Certificate of Registration is attached hereto as **Exhibit 1**.

12. Howarth published the Work on August 16, 2016, by displaying it on his website at the URL <https://morganhowarth.photoshelter.com/image/I0000fX9Oaea4XHw> (the “MH Website”). At the time he published the Work on the MH Website and at all times thereafter, Howarth displayed licensing rights to the public through a Licensing and Terms link on the MH Website.<sup>1</sup>

13. Howarth’s display of the Work on the MH Website also included copyright management information (“CMI”) in the form of Howarth’s name, various copyright notices, and a link to the licensing terms (collectively, the “Attributions”).

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<sup>1</sup> <https://www.morganhowarth.com/p/licensing-and-terms>

14. Howarth's Work is protected by copyright but was not otherwise confidential, proprietary, or trade secrets. The Work in perspective, orientation, positioning, lighting, and other details is entirely original, distinctive, and unique. As such, the Work qualifies as subject matter protectable under the Copyright Act.

15. At all relevant times Howarth was the owner of the copyrighted Work.

### **INFRINGEMENT BY AAA PRECISION**

16. AAA Precision has never been licensed to use the Work at issue in this action for any purpose.

17. On a date after the Work at issue in this action was created, but prior to the filing of this action, AAA Precision copied the Work.

18. On or about August 11, 2023, Howarth discovered the unauthorized use of his Work on two websites advertising AAA Precision's business. The unauthorized use of the Work can be found at the URLs <https://www.yellowpages.com/bellbrook-oh/mip/aaa-precision-landscaping-llc-16161967/gallery?lid=16161967#> and <https://www.yelp.com/biz/precision-landscaping-bellbrook-2?osq=Lawn%2FSod+Installation> (collectively "the Websites").

19. AAA Precision copied Howarth's copyrighted Work without permission or authority.

20. After AAA Precision copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its landscaping business.

21. AAA Precision copied and distributed Howarth's copyrighted Work in connection with Defendant's business for purposes of advertising and promoting Defendant's business, and in the course and scope of advertising and selling products and services.

22. AAA Precision committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 2**.

23. Howarth never gave Defendant permission or authority to copy, distribute or display the Work at issue in this case.

24. Howarth notified AAA Precision of the allegations set forth herein on September 21, 2023, and October 2, 2023. To date, the parties have failed to resolve this matter.

25. When AAA Precision copied and displayed the Work at issue in this case, AAA Precision removed Howarth's copyright management information from the Work.

26. When AAA Precision copied and displayed the Work at issue in this case, AAA Precision removed Howarth's copyright management information from the Work.

27. Howarth never gave AAA Precision permission or authority to remove copyright management information from the Work at issue in this case.

**COUNT I**  
**COPYRIGHT INFRINGEMENT**

28. Howarth incorporates the allegations of paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Howarth owns a valid copyright in the Work at issue in this case.

30. Howarth registered the Work at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

31. AAA Precision copied, displayed, and distributed the Work at issue in this case and made derivatives of the Work without Howarth's authorization in violation of 17 U.S.C. § 501.

32. AAA Precision performed the acts alleged in the course and scope of its business activities.

- 33. Defendant's acts were willful.
- 34. Howarth has been damaged.
- 35. The harm caused to Howarth has been irreparable.

**COUNT II**  
**REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION**

36. Howarth incorporates the allegations of paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. The Work contains copyright management information (“CMI”) in the form of the Attributions on the MH Website.

38. AAA Precision knowingly and with the intent to enable or facilitate copyright infringement, displayed the Work on the Websites without any of the Attributions in violation of 17 U.S.C. § 1202(b).

39. AAA Precision distributed the Work to the Websites knowing that the CMI had been removed or altered without authority of the copyright owner or the law.

40. AAA Precision committed these acts knowing or having reasonable grounds to know that it would induce, enable, facilitate or conceal infringement of Howarth’s rights in the Work.

41. AAA Precision caused, directed and authorized others commit these acts knowing or having reasonable grounds to know that it would induce, enable, facilitate or conceal infringement of Howarth’s rights in the Work at issue in this action protected under the Copyright Act.

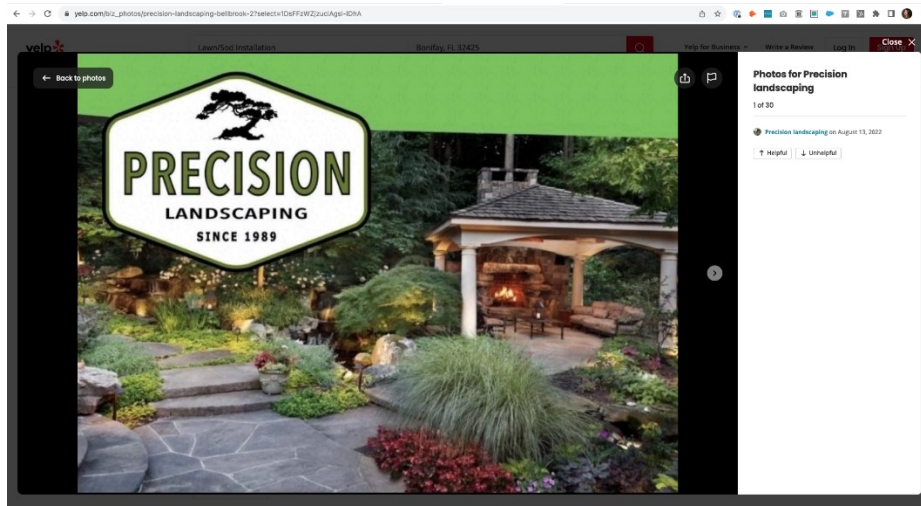
- 42. Howarth had been damaged.
- 43. The harm caused to Howarth has been irreparable.

**COUNT III**  
**ADDITION OF FALSE COPYRIGHT MANAGEMENT INFORMATION**

44. Howarth incorporates the allegations of paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45. The Work at issue in this case contains false copyright management information (“CMI”).

46. AAA Precision knowingly and with the intent to enable or facilitate copyright infringement, added its CMI, to the Work at issue in this action in violation of 17 U.S.C. § 1202(a) in the form of its logo embedded upon the Work, as shown below:



47. AAA Precision distributed copies of the Work to third parties which included false copyright management information conveyed in connection with the Works.

48. AAA Precision committed these acts knowing or having reasonable grounds to know that it would induce, enable, facilitate or conceal infringement of Howarth's rights in the Work at issue in this action protected under the Copyright Act.

49. AAA Precision applied false CMI upon the Copyrighted Work.

50. After applying the false CMI to the Work, AAA Precision published the Work in violation of 17 U.S.C. § 1202(a).



51. Howarth has been damaged.

52. The harm caused to Howarth has been irreparable.

**WHEREFORE**, the Plaintiff MORGAN HOWARTH prays for judgment against the Defendant AAA PRECISION LANDSCAPING, LLC that:

a. AAA Precision and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. §§ 501 and 1202;

b. AAA Precision be required to pay Howarth his actual damages and Defendant's profits attributable to the infringement, or, at Howarth's election, statutory damages, as provided in 17 U.S.C. §§ 504 and 1203;

c. Howarth be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Howarth be awarded pre- and post-judgment interest; and

e. Howarth be awarded such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Howarth hereby demands a trial by jury of all issues so triable.

DATED: February 6, 2024

Respectfully submitted,

/s/ John D. Gugliotta

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